

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7558

Petition of Green Mountain Power Corporation for)
a Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248, authorizing the installation and)
operation of three temporary wind meteorological)
towers on Lowell Mountain in Lowell, Vermont)

Order entered: 11/30/2009

ORDER RE MOTIONS TO INTERVENE

Background

On August 7, 2009, Green Mountain Power Corporation ("GMP"), filed a petition, pursuant to 30 V.S.A. § 248, requesting Vermont Public Service Board ("Board") authorization to install and operate three temporary wind meteorological towers on Lowell Mountain in Lowell, Vermont.

On November 9, 2009, Donald and Shirley Nelson filed a motion to intervene in this docket. In their motion, Donald and Shirley Nelson state that they are adjoining property owners and the proposed project would have a financial impact on their property values and have an adverse affect on the scenic and natural beauty of the area. They assert that no other party can represent or resolve their interest in this case.

On November 10, 2009, Kevin McGrath filed a motion to intervene in this docket. In his motion, Mr. McGrath states that his property abuts the Lowell Mountain Range and the proposed project will have adverse effects on his property values and on the natural beauty of the area. Mr. McGrath also raises concerns about the proposed project's impact on wildlife and whether the surrounding communities were informed of the proposed project.

On November 13, 2009, Milo and Bonnie Day filed a motion to intervene in this docket. In their motion, Milo and Bonnie Day state that their property abuts the Lowell Mountain Range and that the proposed project will have adverse effects on their property values and on the natural

beauty of the area. They raise concerns about the use of their private road to access the proposed site. The Days also raise concerns about the proposed project's impact on wildlife and whether the surrounding communities were informed of the proposed project. In addition, the Days state concerns that GMP had not provided truthful information and answers at a public meeting held by GMP on November 5, 2009.

On November 16, 2009, Roger Stewart filed a motion to intervene in this docket. In his motion, Mr. Stewart states that he is an adjoining property owner and that the proposed project would have a financial impact on property values and have an adverse effect on the scenic and natural beauty of the area, including impacts of the illumination of the towers. Mr. Stewart raised concerns about the proposed project's effects on wildlife, and whether the surrounding communities were informed of the proposed project. Mr. Stewart also states concerns that GMP had not provided truthful information and answers at a public meeting held by GMP on November 5, 2009.

Comments on Motions

On November 16, 2009, GMP filed a response to the motions to intervene filed by the Nelsons, Mr. McGrath, the Days, and Mr. Stewart. GMP does not oppose the adjoining landowners' intervention on a permissive basis with respect to the criteria of aesthetics and general impact on property values (economic benefit). GMP objects to intervention on the basis of the additional interests identified by Mr. McGrath, Mr. Stewart, and the Days. GMP contends that they have shown no particularized interest with respect to the information provided to the surrounding communities or the information provided by GMP at the public hearing (neither of which, GMP asserts, relate to Section 248 criterion), and with respect to any impact of the proposed project on wildlife. GMP also states that the interest of the Days with regard to the private access road relates to the type of private property interests that is not appropriate for adjudication in a Section 248 proceeding, and that the Days have not demonstrated how GMP's proposed access affects the Days' property. GMP indicates that its proposed access other than public highways will be located on the property of Moose Mountain Forest, LLC and Wind Blown Energy LLC.

On November 16, 2009, the Department of Public Service ("Department") filed a response to the motions to intervene filed by the Nelsons, Mr. McGrath, the Days, and Mr. Stewart. The Department has no objection to permissive intervention by the four adjoining landowners. The Department stated that it understands that the scope of their intervention may be limited in accordance with prior Board rulings, such as those cited by GMP.¹

Discussion and Conclusions

In their motions to intervene, the adjoining property owners state that they have concerns and interests related to 30 V.S.A. §§ 248 (b)(4) (economic benefit) and (5) (aesthetics and environment). While this proceeding will not address the impact of the proposed project on individual property values,² one factor relevant to determining whether the proposed project will provide an economic benefit to the state is the overall impact of the proposed project on property values in general.³ Thus, I will allow the adjoining landowners to address such overall economic benefit issues. In addition, I conclude that the adjoiners have demonstrated a particularized interest with respect to the aesthetics of the proposed project (criterion (b)(5)), given that they are adjoining property owners.

Three of the adjoining property owners raised concerns about the proposed project's effects on wildlife. The adjoiners' motions failed to demonstrate a particularized interest with respect to wildlife nor how such an interest may be affected by the outcome of this proceeding. Therefore, I conclude that the adjoiners have not demonstrated any particularized interest with respect to the impact on wildlife (also criterion (b)(5)).

In their motions, Mr. McGrath, the Days, and Mr. Stewart raised concerns with regard to whether the surrounding communities were informed of the proposed project. Under Section

1. In its November 16 filing, GMP cites *Petition of Georgia Mountain Community Wind*, Docket 7508, Order of 7/2/09 at 3 and 10, *Petition of Deerfield Wind*, Docket 7250, Order of 11/6/07 at 5, *Petition of UPC Vermont Wind*, Docket 7156, Order of 6/7/06 at 2-3, *Petition of Vermont Electric Power Company*, Docket 6860, Order of 10/17/03 at 9-10, and *Petition of Deerfield Wind*, Docket 7250, Order of 12/12/07 at 1.

2. As the Vermont Supreme Court stated in *Vt. Elec. Power Co. v. Bandel*, "Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved." (135 Vt. 141,145 (1977)).

3. *Lamoille County Project*, Docket 7032, Order of 3/16/06 at 26.

248(f), plans for construction "must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement." It appears from the petition filed by GMP that it has complied with this requirement. For petitions to construct wind generation facilities, Board Rule 5.403 requires notice to all towns within a ten-mile radius of each proposed turbine. This requirement does not apply to temporary wind meteorological towers. The adjoining property owners have not demonstrated in their motions that GMP has not met the requirements of Section 248(f). Therefore, I conclude that the adjoiners have not demonstrated a particularized interest with respect to the notice provided to the surrounding communities.

Two of the adjoining property owners raised concerns that GMP had not provided truthful information and answers at a public meeting held by GMP on November 5, 2009. In their motions, the adjoiners did not provide any information with regard to these concerns, nor did they identify how these concerns relate to any Section 248 criterion and how they have an interest that may be affected by the outcome of this proceeding. Therefore, I conclude that the adjoiners have not demonstrated a particularized interest with respect to that information provided by GMP.

The Days' motion raised concerns about the use of their private road to access the proposed site. The Board does not have jurisdiction over property disputes, and instead is limited in this proceeding to a review of the proposed project under the Section 248 criteria. It is up to the petitioner to ensure that it has appropriate legal rights to use planned access routes, and any disputes over those property rights are a matter for the civil courts, not this Board.⁴ Additionally, it appears from the petition filed by GMP and its November 16 filing that access for the proposed project will occur through property owned by Moose Forestry, LLC and Wind Blown Energy LLC, and not the Days' property.

For the reasons stated above, I rule as follows on the motions to intervene. I grant the Nelsons' motion on a permissive basis, limited to the interests that they have identified in their

4. *Petition of UPC Vermont Wind*, Docket 7156, Order of 8/8/07 at 59; *Petition of Vermont Community Wind*, Docket 7518, Order of 8/28/09 at 8; *Petition of Vermont Community Wind*, Docket 7526, Order of 8/28/09 at 5.

motion. I grant Mr. McGrath's motion on a permissive basis, limited to the interests that he has identified in his motion with regard to aesthetics and economic impacts of the proposed project (criteria (b)(4) and (5)). I grant the Days' motion on a permissive basis, limited to the interests that they have identified in their motion with regard to aesthetics and economic impacts of the proposed project (criteria (b)(4) and (5)). I grant Mr. Stewart's motion on a permissive basis, limited to the interests that he has identified in his motion with regard to aesthetics and economic impacts of the proposed project (criteria (b)(4) and (5)). For all of the intervenors, their intervention with respect to economic impacts is limited to the overall economic benefit issue, and does not include impacts on individual property values.

I note that the adjoining property owners are representing themselves. These *pro se* parties are reminded that, even though the Board makes accommodations to enable participation by non-attorneys, they are still required to adhere to all of the Board's Rules of Practice for appearing before the Board.⁵ This includes the requirement that all filings be served on all other parties to the proceeding.

I encourage parties with similar interests to work together in the preparation of testimony and discovery, as well as the examination of witnesses. To reduce duplicative testimony and examination, the Board also has the authority under Board Rule 2.209(C) to require parties to join with other parties "with respect to appearance by counsel, presentation of evidence or other matters." I do not impose any such requirements at this time, but may in the future if the "interests of justice and economy of adjudication require."⁶

SO ORDERED.

5. The Board's Rules are available on-line at www.psb.vermont.gov/statutesrulesandguidelines/currentrules.

6. Board Rule 2.209(C).

Dated at Montpelier, Vermont, this 30th day of November, 2009.

s/Mary Jo Krolewski

Mary Jo Krolewski
Hearing Officer

OFFICE OF THE CLERK

FILED: November 30, 2009

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)